



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Russell Dickey, Sr.
d/b/a Dick's Motor Service
343 Island Pond Road
Derry, NH 03038

ADMINISTRATIVE ORDER
No. WMD 02-23

November 7, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Russell Dickey, Sr. d/b/a Dick's Motor Service pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Russell Dickey, Sr. is an individual registered with the New Hampshire Secretary of State to conduct business as Dick's Motor Service ("DMS"), having a mailing address of 343 Island Pond Road, Derry, NH 03038.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Russell Dickey, Sr. is the owner of land at 343 Island Pond Road, Derry, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 2031, Page 0126, and identified on the Derry Tax Map 112 as Lot 17-2.
4. Russell Dickey, Sr. is the owner of land at 1 Bartlett Road, Derry, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3128, Page 2881, and identified on the Derry Tax Map 112 as Lot 4-84.
5. The properties located at 343 Island Pond Road, Derry, NH and Bartlett Road, Derry, NH are herein collectively referred to as "the Site".
6. On August 30, 2002, DES received a complaint alleging that hazardous waste and solid waste were being mismanaged at the Site.

7. On September 12, 2002, DES personnel investigated the complaint by conducting an inspection of the Site. The purpose of the inspection was to determine DMS's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

8. Mr. Dickey operates DMS at the Site. Mr. Dickey also leases portions of the Site to other businesses for the purpose of parking vehicles.

9. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.

10. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

11. During the September 12, 2002 inspection, DES personnel met with Mr. Dickey and walked the Site. DES personnel observed the following containers at the Site in front of the garage:

- a. Four open, unlabeled five-gallon containers with unidentified contents;
- b. Three drums of used oil, one of which was labeled; and
- c. Six unlabeled five-gallon containers with unidentified contents.

12. During the September 12, 2002 inspection, DES personnel observed the following containers in the yard at the Site:

- a. Three unlabeled 55-gallon open containers with unidentified contents;
- b. 17 unlabeled 55-gallon drums with unidentified contents;
- c. 13 unlabeled five-gallon containers with contents. Mr. Dickey indicated the containers contained use oil;
- d. One unlabeled 55-gallon poly drum with unidentified contents;
- e. One open and unlabeled five-gallon container with unidentified contents; and
- f. One unlabeled 55-gallon drum with unidentified contents.

3. DMS is a generator of hazardous waste as defined by RSA 147-A:2, VI.

14. Env-Wm 502.01 requires that all generators of waste shall determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.

15. Several of the containers identified in C. 1 and C.12 have unidentified contents.

16. As of the date of this Order, DMS has not determined if the contents of the containers observed by DES staff during the September 12, 2002 inspection are hazardous.

17. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

18. During the September 12, 2002 inspection, DES personnel observed stained soil in the following areas at the Site:

- a. In front of the garage. Mr. Dickey indicated that hydraulic fluid had been spilled in this area;
- b. At the rear of a landscaping trailer. This area had a strong petroleum odor
Near a run down trailer;
- d. Next to a Komatsu backhoe;
- e. Beneath a drum of lubricant;
- f. Beneath a drum of antifreeze; and
- g. Near a fuel tank.

19. The stained soil observed by DES personnel represents a potential discharge of hazardous waste that requires the responsible party to clean up the discharge. DMS has not conducted a hazardous waste determination on the stained soil.

20. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

21. The containers of used oil identified in C.11 and C.12 were not labeled.

22. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.

23. The containers of used oil identified in C.11 and C.12 were not closed and sealed.

24. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

25. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

26. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

27. During the September 12, 2002 inspection, DES personnel observed five propane tanks. Mr. Dickey indicated that he removes the valves and transports the tanks to Weber's Auto & Truck Parts, Inc.

28. During the September 12, 2002 inspection, DES personnel observed approximately 200 scrap tires.

29. During the September 12, 2002 inspection, DES personnel observed an area of fill. Mr. Dickey indicated that 65 truck loads of cement debris had been brought on-site by McGinnis Waste Recycling ("McGinnis"). DES personnel observed the following waste in the fill area: treated and untreated cement, tile, wire, window frames, metal, paper, particle board, hockey sticks, an air conditioner, sewer pipe, treated wood, a chair, plastic pails, rubber, scrap tires, PVC pipe, insulation, a mini trampoline, and a typewriter.

30. On September 20, 2002, DES personnel spoke with Frank Damon, a representative of McGinnis. Mr. Damon informed DES personnel that McGinnis dumped approximately 200 yards of clean unpainted concrete mixed with dirt at the Site at the request of Mr. Dickey.

31. The tile, wire, window frames, metal, paper, particle board, hockey sticks, air conditioner, sewer pipe, treated wood, chair, plastic pails, rubber, scrap tires, PVC pipe, insulation, mini trampoline, scrap propane tanks and typewriter observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII.

32. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

33. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX

34. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."

35. Russell Dickey, Sr. is the owner of a solid waste facility.

36. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

37. A review of DES files shows that Russell Dickey has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

38. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored as follows:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;

- (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
- (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
- (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

39. The tires observed during the September 12 inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).

40. As a result of the September 12, 2002 inspection, DES issued a Report of Initial Complaint Investigation ("RICI") dated September 18, 2002, to DMS advising it to cease operating an unpermitted solid waste facility; notify DES as a hazardous waste generator if necessary upon identification of contents with unknown contents; label and seal all used oil and hazardous waste containers; remove all solid waste at the Site to a permitted solid waste facility; containerize released material; and identify the contents of all containers and manage the contents according to the Hazardous Waste Rules and/or Solid Waste Rules as appropriate.

D. DETERMINATION OF VIOLATIONS

1. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.
2. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on containers with unidentified contents as well as the stained soil.
3. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated Env-Wm 513.02(a) by failing to clean up a discharge of a hazardous waste.
4. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."
5. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycle.
6. Russell Dickey, Sr. d/b/a Dick's Motor Service has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Russell Dickey, Sr. d/b/a Dick's Motor Service as follows:

- 1 **Immediately** cease operating an unpermitted solid waste facility.

2. **Immediately** cease accepting or bringing any solid waste to the Site.
3. **Within 30 days** of this Order, submit to DES for approval a Scope of Work prepared by a qualified environmental consultant for: a) the removal of all solid waste (excluding clean concrete and soil) at the Site; and b) the identification of the nature and extent of soil and groundwater impacts at the Site from discharges to the environment. Include as part of the Scope of Work a schedule which details when the work will be done.
4. If analyses of the soil or the groundwater shows any exceedance of the cleanup standards as detailed in the DES Contaminated Sites Risk Characterization and Management Policy dated January 1998, initiate activities to satisfy the requirements of the policy within 30 days of receiving the analyses.
5. **Within 15 days** of this Order, submit a written status report identifying the consultant required by item E.3 and provide documentation that certifies the consultant has been retained.
6. **Within 15 days** of this Order, conduct a hazardous waste determination as specified in Env-Wm 502.01 on the containers with unidentified contents and the stained soil. Submit the results together with any other supporting data, material safety data sheets, chemical analyses, or process knowledge to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled pursuant to the Hazardous Waste Rules.
7. **Within 15 days of receiving hazardous waste determination results**, remove all hazardous waste/used oil, and stained soil at the Site to a facility or facilities permitted to accept such wastes.
8. **Immediately** ensure that all containers of used oil destined for recycle are properly labeled with the words "Used Oil for Recycle" as specified by Env-Wm 807.06(b)(4).
9. **Immediately** ensure that all containers of used oil destined for recycle are properly sealed at all times, except when used oil is being added to or removed from the containers as specified by Env-Wm 807.06(b)(5).
10. **Within 7 days** of the disposal of the solid waste, forward copies of disposal receipts to DES
 - 1 **Within 7 days** of the disposal of the stained soil, forward copies of disposal receipts to DES.
12. **Within 7 days** of the disposal of the hazardous waste/used oil forward copies of disposal receipts and/or hazardous waste manifests to DES.
13. Submit one written status report to DES **within 45 calendar days** of this Order and a second report **within 70 calendar days** of this Order, certifying that corrective measures have been implemented. Include in each report supporting documentation describing those measures taken to achieve compliance during the reporting period, together with copies of any written plans or proceedings developed.

14. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Cheryl McGary, Waste Management Specialist
DES Waste Management Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-2456
e-mail: cmgary@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Russell Dickey, Sr. d/b/a Dick's Motor Service of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M or RSA 147-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Russell Dickey, Sr. d/b/a Dick's Motor Service remains obligated to comply with all applicable requirements, in particular RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules. DES will continue to monitor Russell Dickey, Sr. d/b/a Dick's Motor Service's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Philip J. O'Brien, Ph.D., Director
Waste Management Division



George Dana Bisbee, Acting Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3991

cc: DB/FILE/ORDER
Gretchen Rule, DES Legal Unit
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